



**MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION**

**OPERATIONAL MEMORANDUM
NO. 9**

**SUBJECT: TREATMENT OF RULES IDENTIFIED FOR REPEAL IN RENEWABLE OPERATING
PERMIT APPLICATIONS**

EFFECTIVE DATE: June 21, 1996

PREAMBLE

Section 5507(1)(f)(ii) of Act 451 requires each administratively complete application for a renewable operating permit (ROP) to include information regarding all applicable requirements for each process at the source. Rule 101(o)(ii) defines "applicable requirement" to include "a standard or requirement...promulgated in administrative rules pursuant to the act". The Air Quality Division (AQD) has identified several rules that are no longer necessary and has commenced action to repeal these rules. Language in the existing act and rules requires ROP applications to address these rules even though they are obsolete and are in the process of being repealed. Including information regarding these rules in the ROP applications will result in considerable wasted time for both the applicants and the AQD. Please see the AQD staff report for the repeal of these rules for an explanation of why the AQD believes their repeal is appropriate.

POLICY

For the purpose of submitting an administratively complete application for a ROP which addresses all applicable requirements, a person need not address any of the following administrative rules which have been specifically identified by the AQD as no longer necessary:

1. R 336.1320 (Rule 320) Compliance programs. Requires submittal of compliance programs for particulate limits promulgated in January, 1981.
2. R 336.1373 (Rule 373) Fugitive dust control requirements; areas listed in table 36. These requirements have been replaced by the fugitive dust control requirements of Section 5524 of Act 451 which remain as potentially applicable requirements.
3. R 336.1501 - R 336.1507 (Rules 501 to 507) Extension of sulfur dioxide compliance dates for power plants past January 1, 1980.
4. R 336.1603 (Rule 603) Compliance program. Requires submittal of compliance programs for volatile organic compound limits promulgated in January, 1981 and compliance by December, 1982.
5. R 336.2010 (Rule 1010) Reference test method 5A. This reference test method is no longer used.

6. R 336.2199(c) (Rule 1199(c)) Exemptions from continuous emission monitoring requirements. Allows for sources scheduled for retirement before October, 1980 to be exempt from continuous emission monitoring requirements.
7. R 336.2301 - R 336.2308 (Rules 1301 to 1308) Air pollution episodes. Requirements for sources to maintain and implement plans for emission reductions during an “air pollution episode” or “air pollution alert”.

With the exception of item 7 (Air pollution episodes), the rules listed above are all related to obsolete requirements for submitting compliance schedules (items 1, 3, 4, and 6); rules that have been superseded by requirements of the Act (item 2); or compliance test methods that are no longer acceptable (item 5). The AQD believes that only R 336.2301 - R336.2308 (item 7, Rules 1301 to 1308, air pollution episodes) includes provisions that meet the definition of “applicable requirement” and as a result would need to be addressed in an application for a renewable operating permit pursuant to R 336.1210.

In the event that one or more of these rules is not repealed, the AQD will require any necessary information to be submitted as additional information during the technical review of the application pursuant to Rule 210(3). This will not affect the person’s “application shield” pursuant to Rule 210(1) unless the person does not respond to the additional information requests as described in Rule 210(3).

PROCEDURE

1. For the purpose of determining whether an application for a renewable operating permit is “administratively complete” pursuant to Rule 210, AQD staff shall consider the rules listed in the POLICY section of this Operational Memorandum to be outside of the definition of “applicable requirement”. The “application shield” shall not be denied to any source due to a lack of information regarding the rules identified in this Operational Memorandum.
2. If a final decision is made by the Department not to repeal one of the listed rules prior to the issuance of a ROP, AQD staff shall request, pursuant to Rule 210(3), any necessary additional information to determine the applicability of the requirement or to enforce the requirement. If the applicant responds to the additional information request with the time frame specified in Rule 210(3) then the lack of information in the initial application shall not affect the “application shield” pursuant to Rule 210(1).
3. If a final decision is made by the Department not to repeal one of the listed rules after the issuance of a ROP, AQD staff shall take actions, pursuant to Rule 217(2), to reopen and amend any permits which are affected by that decision.

This memorandum is intended to provide guidance to Air Quality Division staff to foster consistent application of Part 55 of Act 451 of the Public Acts of 1994, the Natural Resources and Environmental Protection Act and the administrative rules promulgated thereunder. This document is not intended to convey any rights to any parties nor create any duties or responsibilities under law. This document and matters addressed herein are subject to revision.

Questions regarding this memorandum should be directed to Mr. David Yanochko at 517-373-7035.

RSJ:DY:amh